Testimony of Donald G. Cole, Executive Director of the Public Services Commission Before the Committee on Rules & Judiciary of the 34th Legislature of the United States Virgin Islands

St. Thomas, United States Virgin Islands
April 9, 2021
Via Email
Honorable Senator Carla Joseph
Chairperson
Committee on Government Operations & Consumer Protection
34th Virgin Islands Legislature
Capitol Building
Charlotte Amalie, St. Thomas, VI 00804
senatorjoseph@legvi.org

Re: Bill No. 34-0021 – An Act amending titles 3 and 30 of the Virgin Islands Code, pertaining to the Public Services Commission (Proposed by: Senators Janelle K. Sarauw)

Good morning Honorable Members of the Committee on Government Operations & Consumer Protection: Chairperson Senator Carla Joseph, Vice-Chair Senator Novelle E. Francis, Jr. and members Senator Marvin A. Blyden, Senator Alma Francis Heyliger, Senator Jawan E. James, Sr., Senator Franklin D. Johnson, and Senator Milton E. Potter. The Public Services Commission wants to thank you for the opportunity to testify today on Bill 34-0021 regarding the composition of the Public Services Commission. We particularly want to thank Senator Janelle K. Sarauw for bringing this bill forward.

Much of Bill 34-0025 is at the request of the Commission, which has urged the updating and reform of the code for many years. Title 30, Chapter 1 defining the utilities to be regulated by the Public Services Commission and providing both the tools and the limits of that regulation has been largely unchanged for nearly 50 years – while the regulated industries have changed in every manner possible. The world of telecommunications today would have been fantasy in 1965 – cell phones, wrist phones, broadband and the internet, streaming TV – all were merely science fiction when Title 30 was created. And the world of energy has changed almost as much, but less obviously to the public at large.

The benefits and potential benefits of this legislation significantly outweigh any disagreements that the PSC may have with portions of the legislation.

- Section 1 clarifies the status of the Commission.
  - This is supported by the Commission.

- Section 2 cleans up the existing §1 of Title 30 as to the regulated activities and adds Waste Management to those responsibilities. The Commission did not request the inclusion of Waste Management Authority and has some concerns about this inclusion.
  - The proposed language is in Section 2(a) where a new paragraph (5) is added that places “waste management services provided by the Waste Management Authority or any successor agency” within the regulatory jurisdiction of the Commission. Our concern here is that unlike the other utilities, the Waste Management Authority essentially remains a government agency – it is not close to being fully supported by rates and fees but is instead dependent on funds
provided through the government budget process. It would pose an enormous challenge to both Waste Management Authority and the Public Services Commission to meet the mandates of public service, compliance with the laws and regulations, and reasonable rates when so much of the budget is set by appropriation.

- The Commission fully supports all the remaining changes in Section 2

- Section 3 changes the description of the Commission’s Executive Director’s qualifications and responsibilities. It also time limits the appointment of hearing examiners. It also creates authority for Certificate of “Public Convenience and Necessity” – this is a tool used in many jurisdictions, and telecommunications providers regularly request such certification from the Commission.

  - The Commission has concerns regarding the time limitation on the appointment of hearing examiners. Rate Cases involving telephone company, the Water and Power Authority, and Waste Management Authority’s proposed environmental user fee (since repealed) and Wastewater User Fee have taken substantially long than three months. If the hearing examiner can be reappointed by the Commission as necessary, the three-month limitation is workable.

  - The Commission, except as noted, supports the proposed changes.

- Section 4 changes the description of the Water and Power Authority’s Executive Director’s qualifications and responsibilities, as well as the Authority’s Chief Financial Officer. It also creates the position of Board Counsel for the Authority.

  - The Commission has no objection to the changes as to the Authority’s Executive Director and Chief Financial Officer; the Commission has recommended for years that the Authority’s Board receive advice independent from its Director.

  - The Commission notes that as of the last appearance before the Legislature on March 16th, WAPA’s Board is now receiving independent counsel from WAPA management.

- Section 5 changes various provisions in Chapter 5 of Title 30, relating to the Water and Power Authority. These changes are intended to create increased accountability for the Authority to its ratepayers, the Commission, and the Legislature.

  - The Commission supports these changes, with one qualification.

  - Subsection 5(f) creates a new Section 128 in Title 30, which mandates that Levelized Energy Adjustment Charges (“LEAC”) filings be made quarterly. The Commission is currently working to reconcile the operation of its longstanding LEAC docket, which is a mechanism to ensure that the Water and Power Authority recovers the true costs of its fuel and purchased energy, subject to the possible disallowance of imprudent costs, with the recently enacted Ratepayers’ Bill of Rights (Act No. 8375). The Commission views the limitations in that Act on the Authority’s right to petition for new rates (60-days advance notice provided with billings, 30-days publication prior to petitioning the Commission) to apply to base rates and all new rate structures. We do not view that as applicable to the pre-existing LEAC cost true up process, and if the quarterly
mandate is applied, it would create a potentially significant disconnect between when the fuel costs are incurred and when they can be recovered.

- Section 6 creates Chapter 9 related to Wireless Telecommunication Providers. This is intended to create clear territorial authority and procedures to address customer service issues. At the present time, the only body with clear authority in this regard is the Federal Communications Commission, which has clearly stated its preference for such customer service concerns to be handled at the state or territorial level.
  - The Commission supports these changes.

- Section 7 is primarily directed to the undergrounding of facilities and the Department of Public Works. Although this section is late, it is important that limited funds not be wasted on repetitive undergrounding, needlessly damaging roadways, and impeding traffic. It is important to support competition in telecommunications not only to improve customer service, but as we have seen in past storms, redundancy in service is critical. Because this has not been passed, we have already seen stretches of roadway that already have three trenches cut into them, occasionally cutting previously undergrounded lines – and this before the massive undergrounding plans that WAPA has announced with FEMA support.
  - The Commission supports these changes.

- Section 8 is again, like Section 2, intended to provide the Commission with clear jurisdiction to treat the Waste Management Authority as any other regulated utility.
  - The Commission expresses the same concerns as with Section 2.

- Section 9 creates two new subsections in Title 3, section 273 the first of which empowers the Commission to be sued and sue in its own name. Historically the Commission has been represented by the Attorney General, who has frequently had to recuse itself due to conflicts and in other instances has appointed special counsel due to the specialized work of the Commission. The second change is the limitation of personal liability for the Commissioners and their agents and employees. Such limitation is normal for all regulatory commissions, and many other Virgin Islands Commissions. The absence of such protections may be affecting the ability to fill the current vacancies.
  - The Commission strongly supports and has long requested these changes.

We thank you for this opportunity to comment, and for your support for this measure.

Sincerely

Donald G. Cole
Executive Director

cc: Vice-Chair Senator Novelle E. Francis, Jr.
Senator Marvin A. Blyden
Senator Alma Francis Heyliger
Senator Javan E. James, Sr.
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Senator Franklin D. Johnson
Senator Milton E. Potter
Senator Janelle K. Sarauw
Sandra L. Setorie, Assistant Executive Director – PSC

PSC Commissioners
   David Hughes
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   Andrew Rutnik